

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: §
§ Chapter 11
COMPUTE NORTH HOLDINGS, INC., *et al.*, §
§ Case No. 22-90273 (MI)
Debtors.¹ §
§ (Jointly Administered)

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF SPHERE 3D CORP.
IN CONNECTION WITH THE DEBTORS' PROPOSED SALE OF ASSETS AND
POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS**

Sphere 3D Corp. ("Sphere 3D"), a creditor and contract counterparty in the above-captioned cases, by and through its undersigned counsel, submits this limited objection and reservation of rights ("Reservation of Rights") in connection with the proposed sale of the Debtors' assets and the relief sought in the *Debtors' Emergency Motion for Entry of (I) an Order (A) Approving De Minimis Asset Sale Procedures; (B) Approving Certain Bidding Procedures, Assumption, Assignment, and Rejection Procedures, and the Form and Manner of Notice Thereof; (C) Authorizing the Debtors to Enter into Asset Purchase Agreements with Stalking Horse Bidders; and (D) Scheduling a Hearing on the Approval of the Sale of the Debtors' Assets Free and Clear of All Encumbrances as well as the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of the Debtors' Assets Free and Clear of All Encumbrances, (B) Approving Asset Purchase Agreements, (C) Authorizing the*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Compute North Holdings, Inc. (4534); Compute North LLC (7185); CN Corpus Christi LLC (5551); CN Atoka LLC (4384); CN Big Spring LLC (4397); CN Colorado Bend LLC (4610); CN Developments LLC (2570); CN Equipment LLC (6885); CN King Mountain LLC (7190); CN Minden LLC (3722); CN Mining LLC (5223); CN Pledgor LLC (9871); Compute North Member LLC (8639); Compute North NC08 LLC (8069); Compute North NY09 LLC (5453); Compute North SD, LLC (1501); Compute North Texas LLC (1883); Compute North TX06 LLC (5921); and Compute North TX10 LLC (4238). The Debtors' service address for the purposes of these chapter 11 cases is 7575 Corporate Way, Eden Prairie, Minnesota 55344.

Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (D) Waiving Stay Provisions Pursuant to Bankruptcy Rules 6004(H) and 6006(D) [Dkt. No. 91] (the “Bid Procedures Motion”). In support of this Reservation of Rights, Sphere 3D respectfully states as follows:

Background

1. Sphere 3D is a net carbon-neutral cryptocurrency miner. Sphere 3D and debtor Compute North LLC (“Compute North”) are parties to that certain Master Agreement, dated June 3, 2022 (together with any associated Order Forms, the “Master Agreement”), pursuant to which Compute North provides colocation and other services (collectively, the “Colocation Services”) for Sphere 3D’s cryptocurrency mining hardware (the “Mining Equipment”) based in Compute North’s Wolf Hollow Facility located near Granbury, Texas.

2. All of the Mining Equipment that Sphere 3D has delivered, or will deliver, to the Wolf Hollow Facility, or any alternative facility, in connection with the Master Agreement is owned by Sphere 3D.

3. Pursuant to the Bid Procedures Motion, the Debtors seek, among other things, an order (i) authorizing and approving the sale or sales of all or substantially all of the Debtors’ Assets,² (ii) authorizing and approving the Debtors’ entry into each Purchase Agreement, and (iii) authorizing and approving the assumption and assignment of certain Target Contracts in connection therewith.

4. At this juncture, it is unknown whether the Master Agreement will be assumed and assigned by Compute North to a buyer of its business as part of a sale transaction, will be assumed

² Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Bid Procedures Motion.

by Compute North as part of a plan of reorganization, or will ultimately be rejected by Compute North.

Limited Objection and Reservation of Rights

5. The Debtors cannot sell what the Debtors do not own. Sphere 3D does not object to a potential sale transaction *per se*, nor does it object to the potential assumption and assignment of the Master Agreement, provided that any cure costs associated with the Master Agreement are paid and Sphere 3D is given adequate assurance of future performance by any assignee as required pursuant to the Bankruptcy Code.³ Assumption of the Master Agreement requires compliance with all contract terms, and amounts determined to be owed under such assumed contracts are not discharged. *See In re Nat'l Gypsum Co.*, 208 F.3d 498 (5th Cir. 2000).

6. For the avoidance of doubt, Sphere 3D files this Reservation of Rights to ensure that any Purchase Agreement and Sale Order expressly state that the Sphere 3D Mining Equipment, although located at the Wolf Hollow Facility or an alternative facility, is not owned by the Debtors and may not be sold as part of any Sale.

WHEREFORE, Sphere 3D respectfully requests that the Court (i) make clear in any order approving a Sale that the Sphere 3D Mining Equipment is not included in the sale, and (ii) grant Sphere 3D such other relief as may be just and proper.

Dated: October 6, 2022

³ Sphere 3D reserves the right to assert a Contract Objection and/or object to adequate assurance of future performance by a Successful Bidder if and as necessary at the appropriate time in accordance with any order approving the Bid Procedures Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of October 2022, a true and correct copy of the foregoing Limited Objection and Reservation of Rights was served via the Court's Electronic Notification System on all parties requesting notice.

/s/T. Josh Judd
T. Josh Judd